

UY MATIAO & CO., INC., PLAINTIFF AND APPELLEE, VS. THE CITY OF CEBU, MIGUEL RAFFIÑAN, AS MAYOR; ANATOLIO YNCLINO, AS CITY TREASURER AND JESUS E. ZABATE, AS ASSISTANT CITY TREASU...

G. R. No. L-4887. May 30, 1953

Ponente: PADILLA, J.

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PADILLA, J.:

Under and pursuant to the provisions of Ordinance No. 38, series of 1946, as amended by Ordinance No. 46, series of 1947, of the City of Cebu, the plaintiff and appellee, a domestic corporation, paid under protest the fees for the storage in its warehouse in the City of Cebu of copra and/or hemp and/or for engaging in buying and/or selling copra and/or hemp in the said City, provided for in said ordinances from 20 December 1948 to 18 November 1949, amounting to P4,019.07, which, together with the fees paid prior to December 1948 and those that may be paid under and by virtue of said ordinances, the plaintiff seeks to recover in this action after a demand for refund had been refused by the corresponding City authorities, on the ground that the fee imposed by said ordinances is unauthorized; constitutes a specific tax prohibited by Commonwealth Act No. 472; contravenes the national policy and Commonwealth Act No. 733, which accepted and approved the Executive Agreement entered into by the President of the United States and the President of the Philippines, where it is provided that no export tax shall be imposed or collected by the Philippines on articles exported to the United States; denies equal protection of the laws; deprives the plaintiff of its property without due process of law; is unjust, unfair, discriminatory, oppressive, arbitrary and confiscatory.

Upon a stipulation of facts and evidence presented the Court of First Instance of Cebu rendered judgment holding Ordinances No. 38, series of 1946, and No. 46, series of 1947, null and void; directing the City of Cebu to refund to the plaintiff the sum of P4,019.07 paid under protest and such other sums paid after 20 December 1948 (1949), without costs. The City has appealed.

The first and main question to determine is whether the City of Cebu is authorized under its charter (Com. Act No. 58) to impose and collect the tax or license fee provided for in the ordinances in question.

Section 17, Commonwealth Act No. 58, provides:

Except as otherwise provided by law, and subject to the conditions and limitations thereof, the Municipal Board shall have the following legislative powers:

* * * *

(m) To tax, fix the license fee for, regulate the business, and fix the location of match factories, blacksmith shops, foundries, steam boilers, lumberyards, shipyards, the storage and sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglycerine, petroleum, or any of the products thereof, and of all other highly combustible or explosive materials, and other establishments likely to endanger the

public safety or give rise to conflagrations or explosions, and, subject to the provisions of ordinances issued by the Philippine Health Service in accordance with law, tanneries, renderies, tallow chandleries, bone factories, and soap factories.

The trial court is of the opinion that the charter of the City of Cebu does not authorize it to impose the tax on or fix the license fee for anyone engaged in the business of buying and selling and storing copra, because (1) copra is not mentioned in the section above-quoted; (2) it is not a highly combustible or explosive material; and (3) the warehouse where copra is stored is not an establishment likely to endanger the public safety or give rise to conflagrations or explosions. And having arrived at that conclusion the trial court deemed it unnecessary to pass upon the other points raised by the plaintiff, to wit: that the ordinances are unjust and confiscatory; violate the rule on uniformity of taxes; and deprive persons subject to the tax or license fee therein provided of their property without due process of law.

The fact that copra is not mentioned in section 17(m), Com. Act No. 58, does not mean that copra is excluded, because oil is in the enumeration and the main component ingredient or constituent part of copra, which is the dried meat of the coconut, is oil. The substances mentioned in the section hereinbefore quoted are haphazardly classified in the enumeration, for coal, oil, hemp and cotton cannot be considered or classified as "all other highly combustible or explosive materials" like gunpowder, gasoline and nitroglycerine. Under and pursuant to the provisions of the charter hereinbefore quoted, the City of Cebu is authorized "to tax, fix the license fee for, regulate the business and fix the location of match factories * * *, the storage and sale of gunpowder * * *, oil, * * *, and other establishments likely to endanger the public safety or give rise to conflagrations or explosions * * *." There is then an express authority of the City of Cebu to tax, fix the license fee for, regulate the business and fix the location of match factories, etc., the storage and sale of gunpowder, oil, etc., and other establishments likely to endanger the public safety or give rise to conflagrations or explosions. Not only has the City of Cebu the power to tax, fix the license fee for, regulate the business and fix the location of factories and the storage and sale of oil, but also to tax, fix the license fee for, regulate the business and fix the location of other establishments likely to endanger the public safety or give rise to conflagrations or explosions. There is no question that under its charter the City of Cebu may tax or impose a license fee on any person, firm or corporation engaged in the business of buying and selling and storing copra in a warehouse located in the city, oil being the main component ingredient of copra, and may regulate and fix its location, because a warehouse used for keeping or storing copra is an establishment likely to endanger the public safety or likely to give rise to conflagrations or explosions. True, copra is not highly combustible or explosive material, but once ignited, the fire resulting therefrom, because of the oil it contains, is difficult to put under control by water and to extinguish it the use of chemicals would be necessary. For that reason such a warehouse is likely to endanger the public safety or likely to give rise to conflagrations.

The tax or license fee in question is not specific because it does not subject directly the produce or goods to tax but indirectly as an incident to, or in connection with, the business to be taxed. It is a tax on the business of buying and selling or storing copra. Section 4 of Ordinance No. 38 provides that a person, firm or corporation engaged in the business of buying or selling copra and at the same time of keeping, holding or storing it at his place of business, bodega or elsewhere before disposing of it, shall pay only the license for engaging in the business of buying and selling it. It is unnecessary to determine whether it is a tax for revenue purposes or a license fee to reimburse the city for the expense incurred by it for service of supervision and issuance of the permit and license because the City of Cebu is authorized not only to impose a license fee but also to tax for revenue purposes.

It is contended that Ordinances Nos. 38 and 46 in question are unfair, unjust, arbitrary and violate the principle on uniformity of taxation, the amount of tax or license fee to be collected not being based on the value but on the weight of the product. Such tax or license fee becomes uniform by making the weight the basis thereof as

provided for in the ordinances in question. A P0.05 tax or license fee for 100 kilos or fraction thereof per month is not arbitrary but reasonable. The tax or license fee provided for in the ordinances in question is imposed on every person, firm, or corporation engaged in the City of Cebu in the business of buying and selling and storing copra in his or its warehouse located within the city. It, as well as the exemption,[1] applies equally to all persons, firms and corporations placed in similar situation. Market fluctuation in the value or price of the merchandise, article, or goods subject to tax or license fee does not make ununiform the rate of such tax or license fee. The fact that the price of copra has been steadily going down, whereas that of hemp going up, does not render the tax arbitrary. Precisely, the tax or license fee provided for in the ordinances in question based on the weight regardless of value is what makes the tax or fee uniform. The tax or license fee does not deprive the owner of the copra and of the warehouse of their property without due process of law, because it is a reasonable tax or fee and it does not deprive the dealer of his copra and the owner of the warehouse where it is kept of his property. If the copra dealer does not want to pay the city tax or fee, he may buy and sell and store the copra elsewhere. It is not a tax on export because it is imposed not only upon copra to be exported but also upon copra sold and to be used for domestic purposes, if stored in any warehouse in the City of Cebu and the weight thereof is 100 kilos or more. The tax or license fee in question is not among those prohibited or beyond the power of the municipal councils and municipal district councils to impose, as provided for in section 3, Commonwealth Act No. 472. Besides, Commonwealth Act No. 472 applies only to municipal councils and municipal district councils and not to cities like the City of Cebu which has its own charter.

For the foregoing reasons, the judgment appealed from is reversed, the complaint of the plaintiff is dismissed, without costs.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] Section 1, Ordinance No. 38 (Proviso)

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